

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

PRE-CAST SPECIALITIES, INC.

Employer,

and

**CONSTRUCTION AND CRAFT WORKERS
LOCAL UNION No. 1652**

Petitioner.

Case No. 12-RC-139665

**EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S
REPORT ON OBJECTIONS AND RECOMMENDATION
TO THE REGIONAL DIRECTOR**

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I. INTRODUCTION

Pursuant to Section 102.69(e) of the Board's Rules and Regulations, the Employer, by and through the undersigned counsel, hereby files these Exceptions to the Hearing Officer's Report on Objections issued on February 11, 2015. The specific factual and legal grounds for these Exceptions and citations to authority are set forth in the Employer's Brief in Support.

II. EXCEPTIONS

1. To the Hearing Officer's erroneous conclusion that "the evidence is insufficient to show that the absence of an interpreter raised a reasonable doubt as to the fairness and validity of the election." (Report, p. 2).

2. To the Hearing Officer's application of an improper standard for the burden of proof to set aside an election where the alleged misconduct is attributed to the Board, and not to the Petitioner. (Report, p. 2).

3. To the Hearing Officer's erroneous conclusion that, "the objecting party retains the burden of showing that the alleged conduct had a tendency to confuse voters and thus interfere with their free choice in the election." (Report, p. 7).

4. To the Hearing Officer's erroneous conclusion that, "Where no agreement was reached, however, the necessity of an interpreter cannot be presumed." (Report, p. 7).

5. To the Hearing Officer's erroneous finding that, "the Employer has the burden to present, specific, detailed evidence showing that the absence of the interpreter had a tendency to create confusion such that voters were unable to exercise their unfettered choice in the election." (Report, p. 8).

6. To the Hearing Officer's erroneous conclusion that, "[t]he fact that the Region in this case unilaterally entered into an agreement with the Employer to provide an interpreter for the election does not alter this analysis." (Report, p. 8).

7. To the Hearing Officer's erroneous finding that, "omitted testimony or evidence is either irrelevant or cumulative." (Report, p. 3).

8. To the Hearing Officer's erroneous finding that, "[t]he only issue is whether the absence of a Haitian Creole interpreter at the election caused such confusion among voters to warrant setting aside the result of the election." (Report, p. 5).

9. To the Hearing Officer's erroneous finding that, "neither of these facts demonstrate that the absence of an interpreter tended to cause confusion." (Report, p. 9).

10. To the Hearing Officer's erroneous finding that, "What is missing from the record is any evidence that a single voter was confused because there was no Haitian Creole interpreter or was otherwise unable to make an informed choice at the polls." (Report, p. 9).

11. To the Hearing Officer's erroneous failure to find that this the election should be set aside based solely upon the absence of an interpreter, pursuant to controlling Board law, and to his erroneous failure to properly apply that decision despite the fact that it controls the outcome of this case. *Gory Associated*, 275 NLRB 1303 (1985). (Report, p. 7).

12. To the Hearing Officer's erroneous reliance upon the Board's decision in *Arthur Sarnow Candy*, 311, NLRB 1137 (1993), the underlying facts of which are completely inapposite.

13. To the Hearing Officer's erroneous failure to find that the Region's failure to secure the presence of a Creole-speaking interpreter cast reasonable doubt upon the fairness and

validity of the election, where the majority of bargaining unit employees primarily speak Creole. (Report, p. 9).

14. To the Hearing Officer's erroneous finding that, "Currins (sic) testimony regarding the literacy of employees is unreliable." (Report, p. 8).

15. To the Hearing Officer's erroneous finding that there was an "absence of persuasive evidence that any Haitian Creole employee was both unable to speak English and also illiterate." (Report, p. 8).

16. To the Hearing Officer's erroneous finding that, "Both witness observers testified regarding the literacy of their coworkers, but neither offered anything more than conclusory statements." (Report, p. 8).

17. To the Hearing Officer's failure to find that Andre Auguste's conclusory testimony was incredible. (Report, p. 8).

18. To the Hearing Officer's failure to find that there was voter confusion within the polling area. (Report, p. 9).

19. To the Hearing Officer's erroneous finding that the Region's failure to fulfill its agreement to provide an interpreter did not constitute objectionable misconduct, and to his erroneous recommendation that Objection 6 be overruled. (Report, p. 6).

20. To the Hearing Officer's erroneous recommendation that Objections 9 and 10 be overruled because "no evidence apart from that set forth above has been produced." (Report, p. 9).

21. To the Hearing Officer's erroneous recommendation that, "the Employer's objections be overruled in their entirety" and "an appropriate certification issue." (Report, p. 9).

22. To the Hearing Officer's erroneous failure to take into account the detailed testimony of Employer witness Stepha Gesner, despite the absence of any credibility finding against him. (Report, pp. 6, 8-9).

23. To the Hearing Officer's erroneous refusal to credit portions of the testimony of Employer witness Kerlande Valbrun based solely upon his conclusion that she was not established as an expert witness. (Report, p. 5).

24. To the Hearing Officer's erroneous reliance upon the absence of an agreement between the parties themselves for purposes of securing the presence of an interpreter as grounds for distinguishing the *Gory* decision. (Report, pp. 7-8)

25. To the Hearing Officer's erroneous failure to recommend that the election be set aside.

Date: February 24, 2015

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CERTIFICATE OF SERVICE

I, do hereby certify that I have on this 24th day of February, 2015, served a copy of the Employer's Brief in Support of Exceptions to Hearing Officer's Report on Objections and Recommendation to the Regional Director upon the following by email:

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